IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2711 OF 2004

Vinodkumar Govindbhai Chapadiya ...Petitioner

Versus

The State of Maharashtra ...Respondent

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Ms.Chandralekha R.Benke for Petitioner.

Mr.B.H.Mehta, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

MARCH 1, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Mehta, A.P.P. waives notice for Respondent.

3. As short question is involved, the matter is taken up for final disposal forthwith, by consent.

4. The Petitioner claims to be the owner of Tata Sumo Vehicle having registration No.GJ-11-E-7465 bearing Engine No.483DL41AQQ 764359, Chasis No.38513AQQ 901348. The said vehicle was seized by the Police in connection with offence, which was tried by the Magistrate being R.C.C. No.394 of 2002. The Petitioner made application for return of the said vehicle being owner thereof. However, the Magistrate was not convinced by the material produced by the Petitioner regarding its ownership. Accordingly, application preferred by the Petitioner came to be rejected. Petitioner carried the matter in Revision before the Sessions Judge. Even the Revision Petition was dismissed on the reasoning that the documents as produced by the Petitioner were not sufficient to establish the ownership of the Petitioner. However, thereafter, according to the Petitioner, relevant documents have become available to the Petitioner and which shall be placed on record before this Court.

5. Having considered the rival submissions,

in my opinion, instead of recording a final view on fact, for the first time before this Court, the appropriate course, is to set-aside both the orders and relegate the Petitioner before the Magistrate by restoring the original application for return of subject vehicle to the Petitioner, being owner, to be decided on its own merits in accordance with law.

6. The Magistrate will decide the said application afresh, taking into account all the documents including further documents to be produced by the Petitioner to establish his ownership in respect of the subject vehicle.

7. The Magistrate to decide the application as expeditiously as possible, preferably within three months from the receipt of writ of this Court.

8. Petition succeeds on the above terms. Rule made absolute.

A.M.KHANWILKAR, J.